

RONALD L. BONK REPORTING COMPANY

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY

ANNA MAE WESTER , as an individual
and as Personal Representative of
the Estate of Walter J. Wester,

Plaintiff,

-vs-

Case No. 508-108

JOHNS-MANVILLE SALES CORP., a
foreign corporation, SOUTHERN
TEXTILE CORP., a foreign corpor-
ation, UNARCO INDUSTRIES, INC.,
a foreign corporation, CELOTEX
CORP., a foreign corporation,
RAYBESTOS MANHATTAN, INC., a
foreign corporation, EAGLE-PICHER
INDUSTRIES, INC., a foreign cor-
poration, and BUILDING SERVICE
INDUSTRIAL SALES CO., INC., a
domestic corporation,

Defendants.

Examination of DONALD C. POPALISKY, otherwise
than as a witness upon the trial, taken at the instance of
the adverse party, to-wit, the defendants, under the and
pursuant to Section 804.05 of the Wisconsin Statutes, pur-
suant to notice before RONALD L. BONK, a Notary Public in and
for the State of Wisconsin, at 1551 South 108th Street,
Milwaukee, Milwaukee County, Wisconsin, on the 13th day of
June, 1980, commencing at 10:00 a.m. and concluding at
11:30 a.m.

A P P E A R A N C E S:

Charles & Brady, by

ROOM 326 FEDERAL BLDG.
MILWAUKEE, WISCONSIN 53202
PHONE (414) 271-4701



1 Pat Pacenta,
2 700 N. Water Street,
3 Milwaukee, Wisconsin,
4 Appeared on behalf of Plaintiff.

5 Albert, Jude & Van Remmen, S.C., by
6 Mr. John Jude,
7 524 7th Avenue,
8 Racine, Wisconsin,
9 Appeared on behalf of Building Service.

10 **Ermenc** and Hays, by
11 Mr. Gregory B. Hays,
12 7633 W. Bluemound Road,
13 Milwaukee, Wisconsin,
14 Appeared on behalf of Building Service.

15 Riordan, Crivello, Sullivan & Carlson, by
16 Mr. Timothy Mentkowski,
17 710 N. Plankinton Avenue,
18 Milwaukee, Wisconsin,
19 Appeared on behalf of Johns-Manville Corp.

20 Kluwin, Dunphy, Hankin & McMulty, by
21 Mr. Daniel Riedl,
22 1100 W. Wells Street,
23 Milwaukee, Wisconsin,
24 Appeared on behalf of Unarco Industries.

25 Hayes & Hayes,
26 161 W. Wisconsin Avenue,
27 Milwaukee, Wisconsin,
28 Mr. Edward A. Hannan,
29 Appeared on behalf of H. K. Porter Co.
30 and Southern Asbestos Company.

31 Brennan & Collins, by
32 Mr. Thomas Miller,
33 783 N. Jefferson Street,
34 Milwaukee, Wisconsin,
35 Appeared on behalf of Raybestos Manhattan.

36 Churchill, Duback & Smith, by
37 Ms. Frances Martin,
38 730 N. Water Street,
39 Milwaukee, Wisconsin,
40 Appeared on behalf of Celotex.

41 Kasdorf, Dall, Lewis & Swietlik, by

1 Mr. Kenton Kilmer,
1551 S. 108th Street,
2 Milwaukee, Wisconsin,
Appeared on behalf of Eagle-Picher.
3

4 MR. JUDE: By way of explanation to all
5 involved, Mr. Popalisky is here on subpoena and the
6 subpoena was for records of Building Service Industrial
7 Sales Co., Inc. which for the relevant period of time
8 in this lawsuit was not in existence. It didn't come
9 into existence until 1964 and prior to that it was
10 existing as a partnership which you may or may not
11 want to get into.

12 MR. KILMER: Yes, I will.

13 MR. JUDE: But at least for purposes of
14 today to at least keep it somewhat less confusing, I
15 wanted to explain that for the record to all involved.

16 DONALD C. POPALISKY, called as a witness
17 herein by the defendants, having been first duly sworn
18 on oath, was examined and testified as follows:

19 EXAMINATION BY MR. KILMER:

20 Q Is your name Donald C. Popalisky?

21 A Yes.

22 Q Did I pronounce that right?

23 A Yes.

24 Q What is your home address?

25 A 4464 North Prospect.

- 1 Q And what is your business address?
- 2 A 620 North 100th Place.
- 3 Q Now, you are with Building Service Industrial Sales
- 4 Co., Inc.?
- 5 A Building Service Industrial Sales Co., Inc.
- 6 Q And how long has Building Service Industrial Sales
- 7 Co., Inc. been in existence?
- 8 A Have you got the date, Gregory? I think it's 1964.
- 9 MR. HAYS: February 26, 1964.
- 10 MR. KILMER:
- 11 Q Is that a Wisconsin corporation?
- 12 A That's right.
- 13 Q What do you do for Building Service now?
- 14 A President.
- 15 Q And did you start the firm up back in 1964?
- 16 A Yes, myself and another stockholder.
- 17 Q And what was that stockholder's name?
- 18 A Joe Rachlin.
- 19 Q And what name or style did you go under before 1964?
- 20 A Building Service Industrial Sales Co.
- 21 Q I take it that was a partnership, is that right?
- 22 A That's right.
- 23 Q And what were the names of the partners?
- 24 A Same as the two stockholders.
- 25 Q Joe Rachlin or Donald Popalisky, right?

1 A That's correct.

2 Q And how long did you do business under the name Build-
3 ing Service Industrial Sales Co.?

4 A I think we started in 1952.

5 Q And generally what type of business did that partner-
6 ship perform from '52 to '64?

7 A The sales and distribution of insulation products.

8 Q And before that were you in business?

9 A Not relative to this.

10 Q All right.

11 What is your date of birth, sir?

12 A August 4, 1919.

13 Q And your educational background?

14 A Graduate of college.

15 Q Which college?

16 A Hobart.

17 Q And what year?

18 A 1941.

19 Q And what type of work did you do following your grad-
20 uation from college?

21 A I was in the Service.

22 Q From what period of time to what period of time?

23 A 1941 to 1945.

24 Q And after you were released from the Service, what
25 type of work were you engaged in?

1 A I worked for the Schott Machine Company.

2 Q And what type of work did you do for Schott Machine?

3 A I guess you would say I was in charge of an Assembly
4 Department.

5 Q For how long did you work for Schott Machine?

6 A To the best of my recollection, two years.

7 Q And then where were you employed and what type of
8 work did you do?

9 A Building Service Inc.

10 Q And was this a sole proprietorship?

11 A No, that was a corporation.

12 Q All right, and who were the incorporaters?

13 A Myself and Mr. Rachlin. Pardon me, there were three
14 others.

15 Q Want to give us their names too?

16 A Oh boy. I can only give you the last name Korte and
17 Kolm, I think, and that's all I can remember.

18 Q All right, and did you still or did you work under the
19 name or style Building Service Inc. until 1952 then?

20 A I am still working for Building Service Inc.

21 Q I think you changed the name?

22 A Wait a minute, we have two corporations.

23 Q Okay.

24 A One of them is Building Service Inc. and the other
25 one is Building Service Industrial Sales Inc.

1 Q All right, you better explain to us what the difference
2 is between the two.

3 A Building Service Inc. installs acoustical ceilings, in-
4 terior partitions, interior fabricating walls, vinyl
5 walls, carpeting. We also sell furniture, this is
6 as of today.

7 Q All right, you were with Building Service Inc. then
8 from what was that, 19 --

9 A '47.

10 Q On?

11 A That's correct.

12 Q To the present date in June of 1980 , is that cor-
13 rect?

14 A Yes.

15 Q And what was the type of work relegated to Building
16 Service Industrial Sales Co.?

17 A I don't understand what you mean by relegated.

18 Q Well, maybe I used the wrong term.

19 What type of work did you put under the name
20 Building Service Industrial Sales Co.?

21 A The sale and distribution of insulation products.

22 Q And when you started that company in 1952, were there
23 any particular manufacturers that you worked with more
24 than others?

25 MR. JUDE: I think you are confused on the

1 question.

2 MR. KILMER: Okay.

3 MR. JUDE: You are referring to the corpor-
4 ation now?

5 MR. KILMER: No, I am referring to the part-
6 nership Building Service Industrial Sales Co.

7 MR. JUDE: All right.

8 MR. KILMER: If I have got that right.

9 MR. HAYS: It's company.

10 A It's Building Service Industrial Sales Co. We handled
11 fiberglass, Owens-Corning fiberglass material.

12 MR. KILMER:

13 Q And other manufacturers that you worked through?

14 A I don't recall. We sold some insulation materials
15 for Eagle-Picher and Unarco. Other than that, I don't
16 recall.

17 Q Well, as we went through the years, was your main man-
18 ufacturer that you dealt with, was that Owens-Corning
19 Fiberglass?

20 A Yes.

21 Q Has that always been true from 1952 to the present time?

22 A Yes.

23 Q And say in the mid fifties and into the sixties, what
24 percentage of products that went through the partner-
25 ship and then the corporation, the initial partnership

1 was Building Service Industrial Sales Co. and then
2 Building Service Industrial Sales Co. Inc., what was
3 the percentage of Owens-Corning fiberglass products?

4 A I have no idea.

5 Q Was it 90% or in that area?

6 A You want me to guess?

7 A I'd like your best estimate.

8 A 90%, 85%.

9 Q Now, I think you have answered this, but it's not clear
10 in my mind, The Building Service Inc. Co. that you
11 started in the late forties, did you usually hire
12 mechanics to do insulation type work through that
13 company?

14 A Did you say insulation or the installation?

15 Q Well, installation.

16 A Yes.

17 Q And you are still hiring mechanics or installers to do
18 installation work at the present time through that
19 company?

20 A Yes.

21 Q When you started up as Building Service Inc., what was
22 the address, the home address of the company?

23 A Other than being on North 4th Street, I don't know the
24 address.

25 Q All right, where did you move from North 4th Street in

1 Milwaukee, I assume?

2 A To North 8th Street.

3 Q Do you remember the address there ?

4 A No.

5 Q And from North 8th Street, where did you move?

6 A Present location.

7 Q Where is that?

8 A 620 North 103th Place.

9 Q And how long have you been at 620 North 103th Place,
10 approximately?

11 A Thirteen years.

12 Q And how long were you at 315 North 8th Street in
13 Milwaukee, approximately?

14 A Four years.

15 Q Well, I have an invoice here, it's Exhibit 3, I think
16 we can agree that it's 3, No. 11024 dated February 11,
17 '54, indicating that it's a purchase order to Building
18 Service Industrial Sales Co. at 315 North 8th, would
19 that be approximately correct?

20 A I don't remember. It must have been.

21 Q So, in the fifties, were you probably at 315 North 8th
22 Street, is that correct?

23 MR. JUDE: Let me give him just a minute to
24 refresh his memory.

25 A I think we were there four years, roughly.

MR. KILMER:

Q Are you saying that you were?

A I am saying to the best of my knowledge, that's what happened. I can't remember that far back.

Q Okay, you don't recall any other addresses that you were at for either of your companies other than North 4th and North 8th and North 103th Place?

A There was an interim period where we were two blocks away on 4th Street, both addresses were on 4th Street, but I don't have the addresses.

Q And you ran both companies out of the same addresses at all times?

A That's correct.

Q During the fifties and sixties, did you have salesmen for the company, the partnership, and then its successor, Building Service Industrial Sales Co. Inc. that went throughout the State selling products?

A Yes.

Q And can you give us the names of the various salesmen you had and their addresses, if possible?

A I have the names Robert Friauf, George Leisenring.

Q Those were the two during the fifties and the sixties?

A That's correct.

Q And did they both work at the same time or at different times?

1 A Yes.

2 Q At the same time?

3 A Yes, one started a little bit earlier than the other,
4 but they both worked at the same time.

5 Q Did the two men, Friauf and Leisenring, have different
6 territories?

7 A Yes.

8 Q Can you tell us the territories for each one as best
9 as possible?

10 A Generally speaking, Friauf was a northern part of the
11 state, and Leisenring was in the southern.

12 Q And specifically, what was their function, what was
13 their job description?

14 A Sell insulation products.

15 Q Okay, now we gave you a subpoena and a notice to your
16 attorney asking you to bring the records.

17 Would you tell us what you did in that regard?

18 A I have no records other than the books indicate that
19 we bought material from Eagle-Picher, if that's who
20 you are talking about, and we sold material to
21 Peterson Builders. But there is no indication of what
22 the products were that we sold.

23 MR. JUDE. Again, just to clarify for the
24 record, the subpoena refers to a time period which the
25 company was not in existence, for the sake of economy,

1 we have supplied what records Mr. Popalisky could
2 locate relative to that, the time period mentioned in
3 the subpoena.

4 MR. KILMER: What, in essence, are these
5 records, can you describe them for us?

6 MR. JUDE: You can go ahead.

7 A All I can tell you, journal entries in the book of
8 purchases and sales, and that's all.

9 MR. HAYS: For the record, also these are
10 records of the partnership business, not of the cor-
11 poration.

12 THE WITNESS: This is the kind of information
13 we have in the account of Peterson Builders.

14 MR. KILMER:

15 Q Is there any other information than this page referable
16 to Peterson?

17 A There is an item from the company that we purchased for
18 and the purchases journal, but that's it.

19 MR. HANNON: Off the record.

20 (Whereupon a brief discussion was had off the
21 record.)

22 MR. KILMER:

23 Q What do you call this ringbinder notebook that's in
24 front of me?

25 A That's a little difficult to answer, what you are

1 looking at is an account receivable on the page I
2 showed you.

3 Q Well, on the front surface of the book or cover of the
4 book, it says General Ledger Accounts Receivable
5 Accounts Payable, is that correct?

6 A It's not because the folders have been put together
7 and changed over, the period of years, as one wore out,
8 we replaced, as you will see in the front, there are
9 purchases, but these tabs don't correlate at all, it's
10 all the same type of information, but in here there is
11 materials that do not relate to the information that's
12 stated on the front.

13 Q Why don't you pick out, if you can, from this book or
14 with the other books that you have, which would reflect
15 any business that was transacted with Peterson Builders
16 out of Sturgeon Bay, Wisconsin?

17 A That's it.

18 Q This is it, the two pages that are in front of me right
19 now?

20 A I don't know whether there is more pages in there or
21 not.

22 MR. JUDE: You are referring to a specific
23 time period?

24 MR. KILMER: I am going from 1950 through
25 1960, starts in '53, 1955.

1 Let's go off the record.

2 (Whereupon a brief discussion was had off the
3 record.)

4 THE WITNESS: Here is Peterson Builders
5 again. Here is an illustration of, for example, of a
6 purchase from Eagle-Picher.

7 MR. KILMER:

8 Q We are looking for Peterson right now.

9 You think this is the only thing you have then on
10 Peterson, are these two?

11 A I am positive.

12 MR. KILMER: I will get back to that in a
13 little while. We will go to Exhibit 3 first.

14 First let's talk about Seela Mountain Company out
15 of Hamilton, Ohio, have you ever heard of that company?

16 A No.

17 MR. JUDE: Ken, excuse me just a second.
18 What he has in front of him is just the purchase orders
19 for Building Service.

20 MR. KILMER: All right, in chronological
21 order, let's talk about Exhibit 3, which is Purchase
22 Order 11084, you have that in front of you, sir?

23 A Yes.

24 Q Evidently that's a purchase order from Peterson Build-
25 ing Service, is that correct?

1 A That's what it says.

2 Q And there is an indication that evidently your address
3 was 315 North 8th Street, at least in February of '54,
4 correct?

5 A That's correct.

6 Q Now, I assume that it's true that Building Service did
7 submit at sometime in 1954 the items listed in Purchase
8 Order 11084, is that correct?

9 A I would assume they did.

10 Q All right. Now, would you explain to us what 40 inch
11 wide monel wire inserted asbestos cloth is?

12 A Other than it's got asbestos cloth with monel wire, I
13 have no idea.

14 Q Do you know the manufacturer of that item?

15 A No.

16 Q And what about right underneath that there is the 40
17 inch wide asbestos cloth, it looks like it's Spesco-C-
18 466, do you know the manufacturer of that item?

19 A No.

20 Q Do you have anyone within your organization that would
21 have knowledge of that?

22 Q Where we bought it?

23 Q Yes.

24 A I don't know.

25 Q Do you have any records pertaining to brochures

1 by various manufacturers listing or selling their
2 products in these brochures, do you have those back at
3 the office?

4 A At the time period you are talking about here?

5 Q Yes.

6 A No.

7 Q When is the last time that you have, what is the oldest
8 type catalog or brochure that you may have from some
9 manufacturers?

10 A I can't answer that, because the oldest one we have is
11 the latest one they put out, and whether they changed
12 it last year, I have no idea.

13 Q Well, let's start this way. Name the manufacturers
14 that you're presently purchasing products from.

15 A Fiberglass.

16 Q That is Owens-Corning?

17 A Owens-Corning Fiberglass.

18 Q Who else?

19 A Armstrong Cork Co., Benjamin Foster has got a new name,
20 I don't know what it is.

21 Those are the major people.

22 Q All right, how about, --

23 MR. HANNAN: I didn't catch the last one, what
24 was the last person?

25 A It was Benjamin Foster at the time, I don't know what

1 they call themselves now, because they were sold out.

2 MR. KILMER:

3 Q In the 1960's, name the manufacturers that you pur-
4 chased products through.

5 A Fiberglass.

6 Q That's Owens-Corning Fiberglass?

7 A Owens-Corning Fiberglass, right. I don't recall, I
8 didn't do the purchasing.

9 Q All right, what was the name of your purchasing agent
10 back in the 1960's?

11 A His name was L. Bershaber, I think. I don't know how
12 to spell it, I don't know where you'd find him.

13 Q He's not with you, I take it, anymore?

14 A No.

15 Q How about back in the fifties, who was it?

16 A I have no idea.

17 Q And evidently the main manufacturer that you purchased
18 from in the 1950's was Owens-Corning Fiberglass too?

19 A Yes.

20 Q Is the likelihood then that, in your opinion, that the
21 asbestos cloth referred to in Exhibit 3, which is the
22 Purchase Order No. 11034, was manufactured by Owens-
23 Corning?

24 MS. PACENTA: I object to that question.

25 He's already testified that he didn't know.

1 MR. HANN: I didn't catch the answer.

2 MR. JUDE: Go ahead. Did you get the answer?

3 A No.

4 MR. KILMER:

5 Q Let's turn to Exhibit 3, Purchase Order No. 11175.

6 Do you have that in front of you?

7 A Yes.

8 Q That is dated February 24, 1954, is that correct?

9 A Yes.

10 Q Do you know the name of the manufacturer of, it looks
11 like Lag-fas? *- Non - asbestos*

12 A Yes.

13 Q What is the name of that manufacturer?

14 A At that time, it was the Benjamin Foster Company.

15 Q And do you know the name of the Benjamin Foster
16 Company now, or who has assumed that company?

17 A We can get it from the office, but I don't know.

18 Q All right, and the manufacturer of the 25 pounds No.
19 1032 Unarco wire was who?

20 A I think it was Union Asbestos.

21 There is another part of the name but I am not
22 sure what it is.

23 Isn't there a gentleman here from Union Asbestos?

24 MR. JUDE: That's fine.

25 A Oh, all right.

1

MR. KILMER:

2

Q Okay, the next invoice I'd like to refer you to is
3 No. 11282.

4

Do you have that in front of you?

5

A Yes.

6

Q That is dated March 30, 1954?

7

A Yes.

8

Q And what was the name of the manufacturer of the
9 three-eighths inch uni-bestos 750 pipe covering?

10

A Unarco.

11

Q All right, the next exhibit is No. 11343, Exhibit 3,
12 that is dated April 21, '54, is that correct?

13

A Yes.

14

Q Evidently the pipe covering, the first seven items
15 that was distributed or delivered through you to
16 Peterson Builders was manufactured by whom?

17

A Unarco.

18

Q What about the item number eight?

19

A I don't know.

20

Q Item number eight is 950 Square feet one inch thick
21 type A and would you read the next item there?

22

A Something or other asbestos felt.

23

Q Looks like a-m-e-s-i-t-e, but I could be wrong, is that
24 right?

25

A I don't know, I can't read it.

1 Q How about item number nine?

2 I take it you wouldn't know the manufacturer of
3 that item either then?

4 A No.

5 Q And item number ten, asbestos cloth?

6 A No.

7 Q Is there any way that you can ascertain the manufac-
8 turer of the asbestos cloth by going back and looking
9 at SS-C-466?

10 A We don't have that, that's a Coastguard specification.

11 Q What do you mean by it being a Coastguard specification?

12 A Coastguard specifies the product that is supposed to be
13 used.

14 Q Do you recall what companies distributed asbestos cloth
15 to you back in the fifties?

16 A No.

17 Q And item number eleven is five pounds of asbestos
18 wire inserted yarn non-magnetic type 2, do you know the
19 manufacturer of that item?

20 A No.

21 Q Is there any way that we could check in your records
22 to learn of the name of the manufacturer of that item?

23 A No.

24 Q Turning to the next exhibit 3, which is April 20, 1955,
25 Order No. 12046, do you have that in front of you?

1 A Yes.

2 Q And the name of the manufacturer of item number one
3 was who?

4 A I don't know.

5 Q And how about item number two?

6 A To be positive, I would have to say no.

7 Q What is your best estimate?

8 A I think it was Owens-Corning Fiberglass.

9 Q And item number three was whom, would be Owens-
10 Corning again, I take it?

11 A I don't know what item number three is.

12 Q Looks like it's a ditto on the absorbing insulation
13 rolls?

14 A Yes.

15 MR. JUDE: Our copy is very poor here.

16 MR. KILMER: Mine is too.

17 MR. JUDE: If the assumption is that it's a
18 ditto, then his answer will stand.

19 MR. KILMER: Okay.

20 Let's turn to the next Exhibit 3, which is Order
21 No. 12564, dated February 29, '56.

22 12564 I think it is, do you have that item in
23 front of you?

24 A Yes.

25 Q And there is only one item there, looks like it's

1 asbestos flexboard, right? Do you know the manufac-
2 turer of that?

3 A No.

4 Q Is there any way we could ascertain who the manufac-
5 turer is through your records?

6 A No.

7 Q Next exhibit that I have in front of me No. 3, No.
8 15313, dated September 25, '57, do you have that in
9 front of you?

10 A Yes.

11 Q And the name of the manufacturer of item number one,
12 the acoustic insulation, was whom?

13 A There again I am not sure, but I think it was Fiber-
14 glass, Owens-Corning Fiberglass.

15 Q How about Exhibit No. 2?

16 A I don't know.

17 Q Or item number two, that would be the asbestos mill-
18 board, you don't know?

19 A No.

20 Q And any possible way by checking your records that we
21 could ascertain the name of the manufacturer of item
22 two?

23 A No.

24 Q Next Exhibit 3 is Purchase Order No. 15967, dated
25 December 12, '57, do you have that in front of you?

1 A Yes.

2 Q And who was the manufacturer of that?

3 A I don't know.

4 Q Can you read the item to me, or can anyone read that
5 item? Looks like it's asbestos felt.

6 MR. JUDE: Asbestos felt.

7 MR. HANNON: Mine looks like, --

8 MS. PACENTA: Looks like insabestos felt.

9 MR. HANNON: Six rolls insabestos felt -1-1/2,

10 -- oh, strike that, 1-1/4 inches by 50 inches by 50
11 feet, rolls type A for up to 858 degrees fahrenheit.

12 Did I read that right?

13 MR. KILMER: I think you did, right.

14 Who do you feel was the manufacturer of that item?

15 A I don't know.

16 Q Is there any way we could ascertain that by looking
17 your records?

18 A No.

19 MR. KILMER: I don't have any others addressed
20 to Building Service, does anyone else have any?

21 MR. HANNAN: No.

22 MR. KILMER: We have been off the record a
23 little bit and you have looked through the various
24 ringbinders of books that you brought today and you
25 have produced all the records pertaining to Peterson

1 Builders, is that correct?

2 A To the best of my knowledge.

3 Q And we have marked those Exhibits 5 and 6, is that
4 correct?

5 A I don't know.

6 Q Mr. Jude will help you out there.

7 A Yes.

8 Q Okay, now on Exhibit 5, at the top, what does it
9 say, hours may be cut off, what does it say right on
10 top?

11 A You mean what you wrote in or what I wrote in?

12 Q Just for the record, indicate what's right on top?

13 A Peterson Builders, Sturgeon Bay.

14 Q Okay, and that's Exhibit 5, is that right?

15 A That's correct.

16 Q And what is Exhibit 5, what is it?

17 A A Sales Journal.

18 Q And what does that reflect?

19 A Sales to Peterson Builders.

20 Q And evidently from August 23, 1955 to March 27 of what
21 year?

22 A Book indicates '56.

23 Q All right, now right on the top it says under August
24 23, 1955, you go to the right, there is the number
25 5795, what does that mean?

1 A 5705 is the Invoice Number.

2 Q And then behind that is 5152 with a checkmark, what
3 does that mean?

4 A That's the Sales Journal that would mean that this is
5 an Accounts Receivable Record rather than a Sales
6 Journal, as I indicated before.

7 Q And then the figure 44 would be, --

8 A The amount.

9 Q Now, on Exhibit 6, is that a Sales Journal too?

10 A That is an Accounts Receivable Record.

11 Q Now does that start off on the top, what does it say
12 at the top?

13 A Peterson Builders.

14 Q And the first item if you follow across, is that
15 August 4?

16 A Yes.

17 Q That would be August 4, 1953, is that correct?

18 A Yes.

19 Q And then the 1648, what does that mean?

20 A That's an Invoice Number.

21 Q And the 546 with a checkmark, what does that mean?

22 A I believe that's \$46.

23 Q All right, comes from the Sales Journal, and the
24 \$7.20 is evidently what Peterson Builders owed you at
25 that time, is that correct?

1 A That's correct.

2 Q Evidently going back to Exhibit 3 and Exhibit 6, you
3 have none of the various invoices in your plant or in
4 your offices?

5 A No.

6 Q How long do you keep those invoices?

7 A Ten years.

8 Q All right, do you have the Sales Journals anywhere?

9 A No.

10 Q All right, you have just looked for in your records
11 and you don't have a Sales Journal, is that correct?

12 A No.

13 Q That is a true statement?

14 A I do not have the Sales Journal.

15 Q And I stand corrected, whenever we are talking about
16 the Sales Journal number, it always begins with an S,
17 is that correct?

18 A That's correct.

19 MR. KILMER: I think that's all I have.

20 The rest of you guys can ask some questions.

21 EXAMINATION BY MR. MENTKOWSKI:

22 Q Sir, in your books I noticed that some of the pages
23 are headed with names of some manufacturers.

24 Do you know what I am talking about?

25 A Yes.

1 Q Okay, what do those pages reflect?

2 A Which page are you talking about?

3 Q Just when you had the books open, I noticed Owens-
4 Corning was at the heading of a page with a number
5 of listing of numbers. I am just wondering what kind
6 of a document that is?

7 A Purchase Journal from Fiberglass. Owens-Corning
8 Fiberglass.

9 Q Your records of purchases from Owens-Corning?

10 A That's correct.

11 Q Did you keep entries like that for all of your
12 suppliers of materials?

13 A To the best of my knowledge.

14 Q Would your books then reflect all of your suppliers?

15 A To the best of my knowledge.

16 Q Do those books contain any references to Johns-Manville?

17 A I don't know.

18 Q If we went through those books, would that be the only
19 way we could find out?

20 A Yes.

21 Q Okay, could you show me which books might contain that
22 type of information?

23 A There is nothing there indicating Johns-Manville.

24 Q Now what books were you just looking through when you
25 just made that statement?

1 Q So you have reviewed all the records that you have
2 regarding purchases of materials from suppliers and
3 found nothing purchased from Johns-Manville, is that
4 correct?

5 A As I looked through the records, I didn't see anything.

6 Q But all of the records you have are here in front of
7 you today, are they not?

8 A To the best of my knowledge.

9 Q And you cannot find anything that would indicate
10 Johns-Manville sold you material?

11 A Not as I look through the books. I could have missed
12 it, I don't know.

13 MR. MENTKOWSKI: That's fine.

14 I have nothing further. Thank you.

15 MR. RIEDL: Nothing. No questions.

16 MR. HANNON: No questions.

17 EXAMINATION BY MR. MILLER:

18 Q I ask you to make the same kind of search again for
19 Raybestos Manhattan.

20 A I know we have none.

21 Q You know you have none?

22 A I have never heard of the name, to the best of my
23 knowledge, I have none because I never heard of the
24 name.

25 Q In your review as you were looking for the previous

- 1 A I don't know what you want to call it.
- 2 Q Well, do you have any name or identification for it?
- 3 A Do I know? No. It's a composite of a lot of things.
- 4 Q Would that composite list all of your suppliers of
- 5 materials?
- 6 A To the best of my knowledge.
- 7 Q What time period would be covered by that?
- 8 A 1953, '54, '55, and that's all in this book.
- 9 Q Do you have other books that would contain similar
- 10 information?
- 11 A There is none in this book, this goes '57, '58 and '59,
- 12 Johns-Manville is not listed unless it's in the
- 13 Sundry Accounts.
- 14 Q Are you looking at those now?
- 15 A I don't see any.
- 16 Q Now you mentioned that they weren't in the regular
- 17 accounts, but you might find them in what you call
- 18 Sundry Accounts?
- 19 A Yes.
- 20 Q You just looked through those Sundry Accounts and
- 21 you found nothing, I take it?
- 22 A That's correct.
- 23 Q Do you have any other similar books that would list
- 24 purchases of your supplies?
- 25 A No.

1 manufacturer that was being discussed, you came across
2 no indication at all of Raybestos Manhattan, is that
3 correct?

4 A That's correct.

5 MR. JUDE: Would you like him to search?

6 MR. MILLER: Just for the record, if you
7 could search again, please.

8 A I don't see any.

9 Q You have reviewed all the records you brought with you
10 today with respect to purchases from manufacturers
11 of asbestos to products between 1950 and 1960, is that
12 correct?

13 A That's correct.

14 Q And you discovered nothing indicating any purchases
15 at all from Raybestos Manhattan in that group, is that
16 correct?

17 A That's correct.

18 MR. MILLER: Nothing further.

19 EXAMINATION BY MS. MARTIN:

20 Q I'm sorry to do this to you, but I'd like you to make
21 a similar search for Celotex or Phillip-Carey.

22 A I find nothing.

23 Q So again you have reviewed your record from 1950 to
24 1960, and you find no record of any sales whatsoever
25 to either Phillip-Carey Corp. or Celotex Corp.?

1 A Right.

2 MS. MARTIN: That's all.

3 EXAMINATION BY MS. PACENTA:

4 Q Mr. Popalisky, I have a few questions for you.

5 What are your duties as president of Building
6 Sales and Industrial Co. Inc. now?

7 A Building Service Industrial Sales Co., Inc.

8 Q That's correct.

9 A All right, I do some selling and handle financial
10 matters.

11 Q Pardon me please?

12 A Handle the financial matters, general duties of the
13 president of a company, administration.

14 Q What were your duties with regard to the partnership
15 between '52 and '64?

16 A Same.

17 Q Where did you, where was your territory or your area
18 of selling in your capacity as salesman for the
19 partnership?

20 A All of the state.

21 MR. JUDE: Of Wisconsin?

22 A Right.

23 MS. PACENTA:

24 Q Were you the salesman who dealt with Peterson Builders?

25 A No.

1 Q Do you know which of your salesmen did between 1952
2 and 1964, during the period of the partnership?

3 A Robert Friauf.

4 Q Is Mr. Friauf still with you?

5 A Yes.

6 Q Do you know his address, his home address?

7 A Woodburn Avenue, but I don't know the number.

8 Q Who else? You mentioned two names that were salesmen
9 for the partnership, are those the only two salesmen
10 that you had?

11 A Yes.

12 Q What other employees did you have during that time?

13 A Warehouse employees.

14 Q What other kinds of employees? This is again for the
15 partnership?

16 A Office.

17 Q And any other type of employees?

18 A No.

19 Q Now you brought with you today some ledgers. I would
20 like to have each of the ledgers marked as an exhibit
21 and just identified as to what they contain generally,
22 so we know what has been brought to the deposition.

23 I wonder if it's possible to do that. They are
24 apart here.

25 MR. KILMER: Let's go off the record.

1 (Whereupon a brief discussion was had with
2 the record.)

3 MS. PACENTA:

4 Q Mr. Popalisky, what is Exhibit 7?

5 A Sales Record.

6 Q What does it reflect?

7 A Reflects the customer that owed the corporation for the
8 company in this case.

9 Q These customers were customers who purchased insulation
10 supplies from Building Industrial Sales Company?

11 A Yes.

12 Q What chronology is spanned in that book, first of all
13 let me ask you, are the records in that book arranged
14 chronologically or by account number?

15 A By account number.

16 Q Number or name?

17 A Name.

18 Q Are they also arranged chronologically, in other words,
19 do they represent, --

20 A No, they are arranged by alphabet.

21 Q Was there any date when that book was no longer used
22 as a ledger?

23 A Yes.

24 Q Do you know when that ledger was ended or stopped?

25 A Specifically, no.

1 Q When you were answering the subpoena, how did you
2 decide which records to bring with you today?

3 A Well, we were advised to bring along the records from
4 both the partnership and the corporation by our attorney
5 for your convenience.

6 Q Are these all the records you have of any transactions
7 done by the partnership?

8 A Between 1950 and '60.

9 Q Between 1950 and 1960?

10 A Yes.

11 Q Are these all the records that have been saved?

12 A Yes.

13 Q Do you know if these records kept all of the sales
14 record entries for that period?

15 A No.

16 Q You don't know?

17 A No.

18 Q In other words, there may be sales records for the
19 period that has been lost or misplaced or at any rate,
20 have not been kept to date?

21 A Yes.

22 Q What is Exhibit 8?

23 A It has Accounts Payable General Ledger which includes
24 Cash Accounts Receivable Materials, it covers the
25 entire span of the books, sales freight, accounts

1 payable, material purchases, this is a general
2 journal.

3 Q Mr. Popalisky, when you said it covers the entire span
4 of the books, you mean it chronologically covers all
5 the books we have here?

6 A That's correct, it also contains the accounts receiv-
7 able. Off the record, I haven't looked at the rest
8 of those that thoroughly, it may change when you ask
9 me what the rest of them are.

10 Q Right.

11 A All right.

12 Q Let me ask you one last question about Exhibit 8 and
13 the accounts receivable sheets in that ledger represent
14 billings to your customers for insulation supplies
15 you sent to them?

16 A Yes.

17 Q Could you tell us what Exhibit 9 is?

18 A It is a continuation of the General Accounts, travel,
19 entertainment, old-age benefits, insurance and so
20 forth. Also has a record of the manufacturers or
21 suppliers that we purchased from.

22 Q Does it include records of specific purchases from
23 them?

24 A Specific, --

25 MR. JUDE: Could you be more specific in

1 your question, please?

2 Q Is that a record of specific purchases by Purchase
3 Order Number or so identified Case Number, or is it
4 simply a list of your suppliers?

5 A List of suppliers and amounts.

6 Q What do those amounts represent?

7 A What we owed them when we bought from them at the
8 time, or what we paid them.

9 Q What, all right, what does the notation CK in front of
10 a number mean in the column that is identified at the
11 top as FOL.?

12 A I presume it's the check number that we paid them with.

13 Q And then the P ahead of a three-digit number under
14 that check notation, would be what?

15 A It's an offset, take it out of purchases.

16 Q Would P represent a Purchase Order Number, P13?

17 A No.

18 Q All right, so what would this capital P 133, for
19 example, represent?

20 A I presume that that's an entry to that account.

21 Q Wait, I am not following here, what are these?

22 A This apparently, this must be the ledger where we
23 purchased it and we entered against the Fiberglass
24 account.

25 Q So the capital P with the three-digit number probably

1 represents another ledger?

2 A That's correct.

3 Q Entry?

4 A Yes.

5 Q Is that ledger one of the ledgers that you brought
6 with you today?

7 A I will have to look. I don't know.

8 Q Why don't we move on.

9 Mr. Popalisky, what is Exhibit 10?

10 A It's a Purchase Ledger, it's a Purchase Record.

11 Q How is it organized, is it organized by supplier?

12 A No.

13 Q It's organized then by chronology, correct?

14 A That's correct.

15 Q And this particular purchase ledger runs from January
16 '57 until January, '63, excuse me, February, '63?

17 A This is a, --

18 Q What transactions are represented by the entries in
19 this ledger? Can you describe them for us?

20 A Well, it appears that they are purchases from different
21 companies, it's a cash report.

22 Q What is the cash report?

23 A We got money in, you put it in a cash account, and
24 credit the accounts receivable.

25 Q Now, for example, on January, '57, there's an entry

1 for Owens-Corning Fiberglass?

2 A That's correct.

3 Q That means that you purchased some supplies from
4 Owens-Corning Fiberglass, correct?

5 A Yes.

6 Q Would January 22nd, the number across from that entry,
7 be the date it was purchased?

8 A Yes.

9 Q What would the numbers under CVAP mean?

10 A The amount of purchase.

11 Q Now, Mr. Popalisky, what is Exhibit No. 12, or 11, or
12 whatever number we are on, 11?

13 A General Journal Entries which pertain in large part
14 to the closing of the accounts for the year, and they
15 also cover cash receipts from the cash reports that
16 are made out on a daily basis, whenever they occur.

17 Q Now, what transaction would be represented by a cash
18 report, a receipt of money from a customer?

19 A Receipt of money from a customer.

20 Q Some cash report entry would have nothing to do with
21 your purchases from your suppliers?

22 A No.

23 Q The ledger that is Exhibit 10 as we noted, begins in
24 January, 1957, apparently you haven't brought with you
25 a, --

1 A I have none, to the best of my knowledge, I don't have
2 them.

3 Q In other words, you have no ledgers in your possession
4 today or at your office that reflect purchases of
5 suppliers before 1957?

6 A To the best of my knowledge, no.

7 MS. PACENTA: Thank you.

8 Mr. Popalisky, do you know the individual who
9 would have made out those books? It would have been
10 probably your bookkeeper at the time?

11 A Yes.

12 Q Could you give me his or her name?

13 A Larry Bershaber.

14 Q Is that individual still with your company?

15 A No.

16 Q Do you know when he left, to the best of your
17 recollection?

18 A Has to be twelve, fifteen years.

19 Q Do you know where he went after he left your employ?

20 A No.

21 Q Mr. Popalisky, you testified that you purchased main
22 from Eagle-Picher, Unarco, --

23 MR. KILMER: That's not correct, I'm going
24 to object to that. I don't think it's a correct
statement.

1 MS. PACENTA:

2 Q And Owens-Corning Fiberglass?

3 MR. KILMER: That's not correct.

4 MR. HANNAN: I will object to the form of
5 that question as a misstatement of the testimony.

6 MS. PACENTA:

7 Q Let me rephrase the question.

8 You listed three specific suppliers who you did
9 recall your company purchasing supplies from, and
10 those included Eagle-Picher, Unarco and Owens-Corning
11 Fiberglass, is that correct?

12 A Yes.

13 Q Can you describe generally what type of product you
14 purchased from Eagle-Picher?

15 A No.

16 Q Can you describe what type of product you purchased
17 from Unarco?

18 A Pipe covering.

19 Q Can you describe the types of products you might have
20 purchased from Owens-Corning Fiberglass?

21 A How many do you want?

22 Q The ones you recall.

23 A Pipe covering, boiler covering, duct covering, wall-
24 board, insulation board, fiberglass cloth, fiberglass
25 yarn, fiberglass tapes.

1 Q Very good.

2 A With reference to Eagle-Picher, we did purchase
3 insulating cement from them.

4 Q And with regard to Unarco, you can't recall the types
5 of, --

6 A Just pipe covering.

7 Q Would Mr. Friauf or Mr. Leisenring, the salesman,
8 excuse me, is Mr. Leisenring still with you?

9 A Yes.

10 Q Would either Mr. Friauf or Mr. Leisenring have docu-
11 ments of their own?

12 A No.

13 Q That would reflect transactions in the sixties?

14 A Not to the best of my knowledge.

15 Q Or the fifties?

16 A No.

17 Q Did you have a purchasing agent in the fifties or
18 sixties?

19 A No.

20 Q Who was the person who would contact the suppliers
21 during that time to make the transaction with regard
22 to getting your inventory and your supplies?

23 A I don't remember.

24 Q Would it likely have been done by the same person who
25 did the books?

1 A Yes.

2 MS. PACENTTA: I think those are all the
3 questions I have of this witness.

4 MR. KILMER: That's it. You will retain
5 Exhibits 5 through 11?

6 MR. JUDE: Well, let's put that on the
7 record. Do you want us to retain it at the office?

8 MR. KILMER: At his office.

9 MR. JUDE: That's where they will retain it
10 then.

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1 STATE OF WISCONSIN)
2) SS:
3 COUNTY OF MILWAUKEE)

4 I, RONALD L. BONK, a Notary Public in and for the
5 State of Wisconsin, do hereby certify that the above
6 deposition was recorded by me and reduced to writing under
7 my personal direction.

8 I further certify that said deposition was taken
9 at the offices of Kasdorf, Dall, Lewis & Swietlik, 1551
10 South 108th Street, Milwaukee, Wisconsin, on the 13th day
11 of June, A.D., 1980, commencing at 10:00 a.m. and concluding
12 at 11:30 a.m.

13 I further certify that I am not a relative or
14 employee or attorney or counsel of any of the parties or
15 a relative or employee of such attorney or counsel, or
16 financially interested directly or indirectly in this
17 action.

18 In witness whereof, I have hereunto set my hand
19 and affixed my seal of office at Milwaukee, Wisconsin, this
20 _____ day of _____, A.D., 1980.

21 -----
22 Ronald L. Bonk
23 Notary Public
24 In and for the State of Wis.

25 My commission expires 4/20/83.